

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)	
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<u>Fertner et al.</u>)	
)	
Serial No.: 10/537,882)	Group Art Unit: 3761
)	
Filed: June 07, 2005)	Examiner: Jacqueline F. Stephens
)	
For: PERSONAL CARE APPARATUS)	Board of Patent Appeals and
WITH A SUCTION PIPETTE)	Interferences
)	
)	
Confirmation No.: 8419)	
)	

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

In support of the Notice of Appeal filed on January 02, 2008, and pursuant to 37 C.F.R. § 41.37, Appellants present this appeal brief in the above-captioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 1-14 in the Final Office Action dated October 02, 2007 and the Advisory Action Dated January 10, 2008. The appealed claims are set forth in the attached Claims Appendix.

1. Real Party in Interest

This application is assigned to Koninklijke Philips Electronics N.V., the real party in interest.

2. Related Appeals and Interferences

There are no other appeals or interferences that would directly affect, be directly affected, or have a bearing on the instant appeal.

3. Status of the Claims

Claims 1-14 have been rejected in the Final Office Action. The final rejection of claims 1-14 is being appealed.

4. Status of Amendments

All amendments submitted by Appellants have been entered.

5. Summary of Claimed Subject Matter

The present invention, as recited in independent claim 1, is directed to a personal care apparatus comprising an air pump, a motor, and a suction piece. The air pump is attached to the motor and the suction piece to exert a suction effect on human skin. (See Specification p. 2, ll. 4-5). The suction piece is connected to the air pump via an air-transfer duct. The suction piece has at least one circumferentially defined suction aperture for suction-based interaction with the human skin. (See Specification p. 2, ll. 6-7). The suction piece, in the area of the suction aperture, is designed to form a skin protuberance in a suction-based interaction with the skin. (See Specification p. 2, ll. 7-9). The suction piece further has at least two suction piece sections extending to the suction aperture and defining the suction aperture. The two suction pieces are radially adjustable and are designed to exert a radial force on a skin protuberance formed in a suction-based interaction with the skin. (See Specification p. 2, ll. 9-12). The suction piece also has at least two sealing parts of elastically deformable design extending to the suction aperture and defining the suction aperture. Each sealing part is situated between two

mutually adjacent suction piece sections, and has an airtight connection to the two mutually adjacent suction piece section. (See Specification p. 2, ll. 12-16).

The present invention, as recited in independent claim 8, is directed to a suction piece for a personal care apparatus, comprising at least one circumferentially defined suction aperture, at least two suction piece sections, and at least two sealing parts. The suction aperture is for suction-based interaction with human skin. The suction piece, in the area of the suction aperture, is designed to form a skin protuberance in a suction-based interaction with the skin. (See Specification p. 2, ll. 20-23). The at least two suction piece sections extend to the suction aperture and define the suction aperture. The two suction pieces are radially adjustable and are designed to exert a radial force on a skin protuberance formed in a suction-based interaction with the skin. (See Specification p. 2, ll. 23-27). The two sealing parts are of elastically deformable design and extend to the suction aperture to define the suction aperture. Each sealing part is situated between two mutually adjacent suction piece sections and has an airtight connection to the two mutually adjacent suction piece sections. (See Specification p. 2, ll. 27-30).

6. Grounds of Rejection to be Reviewed on Appeal

I. Whether claims 1-14 are unpatentable under 35 U.S.C. § 103(a) over U.S. Pat. No. 1,488,376 to Bryant. (hereinafter “Bryant”).

7. Argument

I. The Rejection of Claims 1-14 Under 35 U.S.C. § 103(a) Over Bryant Should Be Reversed.

A. The Examiner's Rejection

In the Final Office Action, the Examiner rejected claims 1-14 under 35 U.S.C. § 103(a) as being unpatentable over Bryant. (See 10/02/07 Office Action, p. 2).

Bryant is directed to a suction apparatus to extract snake poison from human skin. Bryant consists of a cylindrical body (10) and a vacuum chamber (18). The body has a flared mouth (11) to form an airtight seal with skin to extract the snake venom. (See Bryant p. 1, ll. 36-42). A manual pump (10) uses stem (14) and ring (15) to create suction by the manual pulling out and pushing in of stem (14). (See Bryant p. 1, ll. 63-71).

B. The Cited Patent Does Not Disclose Wherein The Suction Piece Has At Least Two Suction Piece Sections Extending To The Suction Aperture And Defining The Suction Aperture, Said Two Suction Piece Sections Being Radially Adjustable, As Recited In Claim 1

Claim 1 recites, “wherein the suction piece has at least two suction piece sections extending to the suction aperture and defining the suction aperture, said two suction piece sections being radially adjustable.” In the Final Office Action dated October 02, 2007, the Examiner failed to address the above limitation when rejecting claim 1. In the Advisory Action dated January 10, 2008, the Examiner stated that, “these limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art.” (See 01/10/08 Advisory Action p. 1). Appellants respectfully disagree.

Claim 1 specifically recites that the suction piece (8) has two suction piece sections (14) and (15) that extend to form aperture (13). Claim 1 further recites that each of the suction piece sections (14) and (15) are radially adjustable. Thus, through the radial adjustment of the suction piece sections (14) and (15), the size of the aperture (13) can be changed. This is a fundamental difference between claim 1 and Bryant. Bryant teaches a flared mouth (11) made out of either rubber or metal. The flared mouth, however, is of a fixed aperture. The fixed aperture limits the force of the suction applied to the skin since the force of suction is dependant on the size of the aperture. In contrast, claim 1 specifically states, “two suction piece sections being radially adjustable.”

With respect to the Examiner’s contention that this recitation is directed to an intended use and not a structural difference, the Appellants respectfully disagree. The recitation of “two suction piece sections being radially adjustable” is clearly a structural limitation of the claim. While it is intended that a user will make use of this feature to alter the size of the aperture, the

apparatus itself includes two suction piece sections that are radially adjustable. That is, the two suction piece sections are designed to be radially adjustable within the overall apparatus. This is fully described and enabled in the specification. (See, Specification, p. 7, lines 1-6; and Fig. 1). Accordingly, the recitation of “two suction piece sections being radially adjustable” is a structural limitation of claim 1.

Accordingly, the inclusion of radially adjustable suction pieces renders Bryant ineffective. Therefore, Appellants respectfully submit that claim 1 is patentable over Bryant and request the Board overturn the rejection of claim 1. Because claims 2-7 depend from and, therefore, include all the limitations of claim 1, it is respectfully submitted that these claims are also allowable for at least the same reasons stated above with respect to claim 1.

Independent claim 8 recites, “at least two suction piece sections extending to the suction aperture and defining the suction aperture, said two suction piece sections being radially adjustable.” Appellants respectfully submit that this claim is allowable for at least the same reasons stated above with respect to claim 1 and the Board should overturn the Examiner’s rejection of this claim. Because claims 9-14 depend from and, therefore, include all the limitations of claim 8, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 8.

8. Conclusion

For the reasons set forth above, Appellants respectfully request that the Board reverse the rejection of the claims by the Examiner under 35 U.S.C. § 103(a), and indicate that claims 1-14 are allowable.

Respectfully submitted,

Date: September 15, 2008

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CLAIMS APPENDIX

1. (Previously Presented) A personal care apparatus comprising an air pump having a suction piece and a motor for exerting a suction effect on the human skin, wherein the suction piece is connected to the air pump via an air-transfer duct, and wherein the suction piece has at least one circumferentially defined suction aperture for suction-based interaction with the human skin, and wherein the suction piece in the area of the suction aperture is designed to form a skin protuberance in a suction-based interaction with the skin, and wherein the suction piece has at least two suction piece sections extending to the suction aperture and defining the suction aperture, said two suction piece sections being radially adjustable and designed to exert a radial force on a skin protuberance formed in a suction-based interaction with the skin, and wherein the suction piece has at least two sealing parts of elastically deformable design extending to the suction aperture and defining the suction aperture, each sealing part being situated between two mutually adjacent suction piece sections and having an airtight connection to the two mutually adjacent suction piece sections.
2. (Original) A personal care apparatus (1) as claimed in claim 1, wherein the suction piece (8) has two diametrically opposed suction piece sections (14, 15), which are composed of a material that is relatively hard compared to the elastically deformable sealing parts (19, 20).
3. (Original) A personal care apparatus (1) as claimed in claim 2, wherein the suction piece (8) with its two suction piece sections (14, 15) and its two sealing parts (19, 20) has been manufactured by a two-component injection molding process.
4. (Original) A personal care apparatus (1) as claimed in claim 2, wherein the at least two suction piece sections (14, 15) of the suction piece (8) each have a sharp defining edge (K) for defining the suction aperture (13).
5. (Original) A personal care apparatus (1) as claimed in claim 4, wherein the at least two defining edges (K) have a circular arc shape.

6. (Original) A personal care apparatus (1) as claimed in claim 5, wherein the at least two defining edges (K) have a diametric interval of between 3.0 mm and 4.0 mm.
7. (Original) A personal care apparatus (1) as claimed in claim 6, wherein the at least two defining edges (K) have a diametric interval of 3.4 mm.
8. (Previously Presented) A suction piece for a personal care apparatus, comprising:
at least one circumferentially defined suction aperture for suction-based interaction with the human skin, wherein the suction piece in the area of the suction aperture is designed to form a skin protuberance in a suction-based interaction with the skin;
at least two suction piece sections extending to the suction aperture and defining the suction aperture, said two suction piece sections being radially adjustable and designed to exert a radial force on a skin protuberance formed in a suction-based interaction with the skin;
at least two sealing parts of elastically deformable design extending to the suction aperture and defining the suction aperture, each sealing part being situated between two mutually adjacent suction piece sections and having an airtight connection to the two mutually adjacent suction piece sections .
9. (Original) A suction piece (8) as claimed in claim 8, wherein the suction piece (8) has two diametrically opposed suction piece sections (14, 15) which are composed of a relatively hard material compared to the elastically deformable sealing parts (19, 20).
10. (Original) A suction piece (8) as claimed in claim 9, wherein the suction piece (8) with its two suction piece sections (14, 15) and its two sealing parts (19, 20) has been manufactured by a two-component injection molding process.
11. (Original) A suction piece (8) as claimed in claim 8, wherein the at least two suction piece sections (14, 15) of the suction pieces (8) each have a sharp defining edge (K) for defining the suction aperture (13).

12. (Original) A suction piece (8) as claimed in claim 11, wherein the at least two defining edges (K) have a circular are shape.

13. (Original) A suction piece (8) as claimed in claim 12, wherein the at least two defining edges (K) have a diametric interval of between 3.0 mm and 4.0 mm.

14. (Original) A suction piece (8) as claimed in claim 13, wherein the at least two defining edges (K) have a diametric interval of 3.4 mm.

EVIDENCE APPENDIX

No evidence has been entered or relied upon in the present appeal.

RELATED PROCEEDING APPENDIX

No decisions have been rendered regarding the present appeal or any proceedings related thereto.